IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1019 OF 2005
IN
EXECUTION APPLICATION NO.74 OF 2001
IN
AWARD NO.63 OF 1999

Atul Kothare. ..Petitioner.

V/s.

Upendra K. Majithia. ..Respondent.

Mr.Dinesh Purandare i/b Bhadra Dalal for applicant.

Mr.Sandip Parekh i/b S.Lakhani for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 5, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. In my opinion, no indulgence can be shown to the applicant, in view of the self-operative order passed by Justice Kamdar dated 26th April, 2005 in Chamber summons No.1685 of 2003. It is obvious that applicant failed to avail of 8 weeks' time granted under the said order. The justification offered is unacceptable. In any case, the order passed by Justice Kamdar being self-operative order and has been acted upon by the Judgment Creditor by

withdrawing the amount, it is not possible to entertain the prayer for directing the Judgment creditor to bring back the said amount. The remedy for the applicant if any, for withdrawal of the suit amount by the Judgment creditor in terms of order dated 26th April, 2005 will obviously be subject to such order to be passed in the suit pending between the parties being suit No.224 of 1993. This application, in my opinion, ought to fail. Hence rejected. No order as to costs.